IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1679 of 1994

with

SPECIAL CIVIL APPLICATION No 2247 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAKSUDIN AHMED MAHERI

Versus

DHIRAJLAL PARSHOTTAM RANA

Appearance:

1. Special Civil Application No. 1679 of 1994
   MR SUNIL K SHAH for Petitioner.
   Mr. RS Sanjanwala for Respondents No. 1 & 2.
   Mr. LR Poojari, AGP for Respondent No. 3-4
2. Special Civil Application No. 2247 of 1994
   MR SUNIL K SHAH for Petitioner.
   MR RS SANJANWALA for Respondents No. 1 & 2.

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 08/04/2004

ORAL JUDGEMENT

The petitioner, who was claiming to be tenant of land bearing Survey No. 1103 situate at Village Ozarpada of Taluka Dharampur,District-Valsad, had preferred this Special Civil Application under Article 227 of the Constitution of India challenging the order passed by the Deputy Collector (Land Reforms), Appeal, Valsad, dated 30th May 1988 confirmed by the Gujarat Revenue Tribunal by its order dated 18th March 1992 by which both the appellate authority as well as revisional authority had quashed and set aside the order passed by the Mamlatdar and Agricultural Lands Tribunal, Dharampur, dated 28.2.1984 by which the petitioner herein was declared to be the tenant of the land in question under Section 70-B of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as "the Act").

2. The petitioner who was claiming to be tenant of land bearing Survey No. 1103 admeasuring 2 acres of land situated at Village Ozarpada had moved an application before the Mamlatdar and ALT, Dharampur, for declaring him as tenant under Section 70-B of the Act which was numbered as Tenancy Case No. 8645/1984. It was the contention of the petitioner that he was cultivating the land in question since last 15 years and he was paying rent to one Narmadaben who according to the petitioner was the land owner. It was also the contention of the petitioner that he is an agriculturist and was cultivating the land in question since last 15 years and was cultivating crops. That the said application was filed by the applicant in the month of February 1984. The Mamlatdar issued notice upon the original land owner, i.e. respondent No.1 Dhirajlal Purshottam Rana and hearing was fixed on 16.2.1984. On 16.2.1984 the original land owner appeared before the Mamlatdar and asked for a long time to file detailed reply but for the reasons best known to the Mamlatdar he granted only 7 days' time and fixed the hearing on 28.2.1984. That on 28.2.1984 the parties were heard and petitioner pleaded his case as stated hereinabove and in support of his case to prove that he was cultivating the land in question since last 15 years, he had examined two witnesses who were the neighbours of the land in question. The two witnesses who had given statements in favour of the petitioner had also submitted that the petitioner was paying the rent to one Narmadaben. So far as the land owner is concerned, he has denied the allegation and factum of the land in question being cultivated by the petitioner at any point of time. He has also denied that so far as Narmadaben is concerned, she is never the owner of the land in question. So there is no question of

making payment of rent to her as alleged in the application. Considering the evidence on record and the submissions made on behalf of the parties, the Mamlatdar and ALT, Dharampur, by his order dated 28.2.1984 allowed the said application declaring the petitioner as tenant of the land in question under Section 70-B of the Act. It is borne out from the record that prior to initiation of the proceedings by the petitioner the land owner had already sold some portion of the land to one Anjalabhai B. Gaekwad.

3. That being aggrieved and dissatisfied with the order passed by the Mamlatdar and ALT, Dharampur, dated 28.2.1984 in declaring the petitioner as tenant under Section 70-B of the Act, the original land-owner as well as the subsequent purchaser had preferred two appeals before the Dy. Collector (Land Reforms) Appeal, Valsad, being Tenancy Appeal No. 452/1984 and Tenancy Appeal No. 461/1984. The Dy. Collector (Land Reforms) Appeal,Valsad after hearing the parties held that the petitioner has failed to prove that he was cultivating the land in question at any point of time. He has also found that the petitioner has not produced any documentary evidence to prove that he was cultivating the land in question. The Dy. Collector has also found that as such Narmadaben to whom the petitioner was alleged to be giving rent was never the owner of the land in question and therefore the contention of the petitioner that he was paying the rent to the land owner is not required to be accepted. The appellate authority, i.e., Dy. Collector has also found that there are contradictory statements made on behalf of the petitioners with regard to cultivation of the land in question and growing of crops, and on the aforesaid findings the Dy. Collector allowed both the appeals and quashed and set aside the order passed by the Mamlatdar & ALT, Dharampur, dated 28.2.1984 by which the petitioner was declared to be tenant under Section 70-B of the said Act.

4. Being aggrieved and dissatisfied with the order passed by the Dy.Collector, Valsad dated 30th May 1988 in quashing and setting aside the order passed by the Mamlatdar and ALT, Dharampur, dated 28.2.1984 by which the petitioner was declared to be the tenant of the land in question the petitioner preferred two Revision Applications before the Gujarat Revenue Tribunal, Ahmedabad, which were numbered as Revision Applications No. TEN/BS/230/1988 and TEN/BS/231/1988. The Gujarat Revenue Tribunal also after considering the submissions made on behalf of the parties and considering the

evidence on record by judgment and order dated 18th March 1992 dismissed both the revision applications confirming the order passed by the Dy. Collector, Valsad and also confirming the findings given by the Dy. Collector as stated hereinabove.

5. The Gujarat Revenue Tribunal has also found and held that the petitioner has failed to prove by documentary evidence that he was cultivating the land in question at any point of time. The Tribunal has also found that the learned advocate appearing for the petitioner has failed to prove any infirmity in the order passed by the Dy. Collector and his contentions with regard to documentary evidence not considered. It seems that subsequently the petitioner had also preferred a review application, being TEN/BS 8 of 1992 before the Gujarat Revenue Tribunal and the Tribunal by its order dated 30th October 1993 also dismissed the said review application. The aforesaid orders passed by the appellate authority and the revisional authority, i.e., Dy. Collector and the Tribunal had given rise to the present Special Civil Application under Article 227 of the Constitution of India.

6. Shri Sunil Shah, learned advocate appearing on behalf of the petitioner has vehemently argued that when both the authorities below, i.e. revisional authority as well as the appellate authority have found that the procedure which was required to be followed under Section 70-B of the Act is not followed it was incumbent on the part of both the authorities below to remand the matter to the Mamlatdar for deciding the question afresh. He has also relied upon the documents which are at Annexures A & B to the present Special Civil Application to prove the case that he was cultivating the land in question and therefore he has requested that the petition be allowed by quashing and setting aside the order passed by the revisional authority as well as the appellate authority.

7. On the other hand, Shri RS Sanjanwala, ld. advocate appearing on behalf of the original land-owner as well as subsequent purchaser has supported the order passed by the revisional authority as well as the competent authority, i.e., Dy. Collector and the Gujarat Revenue Tribunal. It was submitted by Shri Sanjanwala that the Dy.Collector as well as the Tribunal had not only given the finding with regard to not following the procedure, but both the authorities had also decided the matter on merits after considering the evidence on record and have concurrently found that the petitioner has failed to prove that he was cultivating the land in

question at any point of time and he also supported the findings given by both the authorities below.

8. I have heard the learned advocates appearing on behalf of both the parties. I have also gone through the orders passed by the Mamlatdar & ALT, the Dy. Collector, Valsad and the Gujarat Revenue Tribunal. Both the authorities, i.e. the revisional authority as well as the appellate authority have concurrently found that the petitioner has failed to prove by documentary evidence that he was cultivating the land in question at any point of time. The Annexure A to the petition on which reliance was placed by the petitioner to prove that he was cultivating the land in question was subsequent to the passing of the order passed by the Mamlatdar & ALT, i.e. after 1984. Therefore, no reliance can be placed to support the case of the petitioner that he was cultivating the land in question prior to 1984 in exercise of powers under Article 227 of the Constitution of India. The finding of fact given by both the authorities below are not required to be interfered with. When on evidence, the revisional authority as well as the appellate authority have found that the petitioner has failed to prove any case that he was cultivating the land in question prior to 1984 & that even before this Court also the petitioner failed to show any documentary evidence by which it can be said that the petitioner was cultivating the land in question prior to 1984. The reliance placed by the petitioner on the two statements made before the Mamlatdar is of little help to the petitioner. Those statements are required to be considered and to be given some weightage if the petitioner has proved his case beyond doubt that he was cultivating the land in question at any point of time. As stated above, when the revisional authority as well as the appellate authority have concurrently held that the petitioner has failed to prove his case that he was cultivating the land in question prior to 1984 by cogent evidence, the aforesaid two statements would not be helpful to the petitioner.

Even the revisional authority as well as the appellate authority have concurrently found that the petitioner has failed to prove his case by observing that even the case of the petitioner that he was paying rent to one Narmadaben is also not believable. In view of the fact that both the authorities below have concurrently found that Narmadaben was never the owner of the land in question and when Narmadaben was never the owner of the land in question there was no question of paying any rent to Narmadaben.

9. In view of the aforesaid facts, the claim of the petitioner as well as the statement made by witnesses which were in favour of the petitioner that the petitioner was paying rent to Narmadaben are also not required to be believed. In view of the aforesaid facts and circumstances of the case, the petitioner has failed to prove that the petitioner was cultivating the land in question at any point of time and that he is required to be declared as tenant of the land in question under Section 70-B of the Act. The present Special Civil Applications are, therefore, required to be dismissed confirming the order passed by the revisional authority as well as the appellate authority. Rule is discharged in both the petitions with no order as to costs.

rmr. [M.R. Shah, J.]